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7 IN THE UNITED STATES DISTRICT COURT
8
9 FOR THE DISTRICT OF ARIZONA

10 UNITED STATES OF AMERICA,) CR 15-1723 TUC RCC (DTF)
11 Plaintiff,)
12 v.) **MOTION FOR WITNESS LIST**
13 Lonnie Ray Swartz,)
14 Defendant.)
_____)

15 It is expected that excludable delay under Title 18, United States Code, §
16 3161(h)(1)(F) will occur because of this motion or an order based thereon.
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18 The Defendant, Lonny Swartz, through undersigned counsel, Sean C. Chapman
19 of THE LAW OFFICE OF SEAN C. CHAPMAN, P.C., pursuant to Rule 16 of the
20 Federal Rules of Criminal Procedure, hereby moves for an Order compelling the
21 Government to provide a list of witnesses to be called at trial and to indicate the order
22 of such witnesses.¹ This motion is made for the reasons set forth below.
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25 _____
26 ¹ Pursuant to L.R.Crim. 12.1(a) and L.R.Civ. 7.2(j), undersigned counsel certifies that after personal consultation and sincere efforts to do so, counsel have been unable to satisfactorily resolve this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS RELEVANT TO THE RESOLUTION OF THIS MOTION

Early in 2016 the parties and this Court agreed that this case should be designated as “complex” within the meaning of 18 U.S.C. § 3161(h)(7)(B)(ii).² (Doc. 19, 24.) At that time, the Government had disclosed approximately 7,000 pages of documents. (Doc. 19.) Since then, the documentary disclosure has grown to over 11,000 pages, and continues to be supplemented. In the past few months, for example, the Government has disclosed two new expert witnesses.

The parties are diligently working to be ready for the firm trial date of October 12, 2017. While the Government has been generally cooperative and forthcoming in providing disclosure thus far, there is no reciprocal disclosure agreement entered into by the parties and no scheduling order respecting deadlines to produce Rule 15 disclosure. The defense has no way of knowing what remains to be disclosed by the Government, what additional investigation will be necessitated by any new disclosure, or what additional motions will need to be resolved prior to trial based on new disclosure.

An Order based on this motion will enable defense counsel to focus on the witnesses that the Government intends to call at trial, rather than to cull the thousands

² The statute provides that the Court determine “[w]hether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.”

1 of pages of disclosure and proceed by guesswork. An Order will also promote
2 efficiency and conserve judicial resources by ensuring a smooth trial with fewer breaks
3 and delays.

4 **II. LAW**

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6 Every district court is charged with effectuating the speedy and orderly
7 administration of justice. *United States v. W.R. Grace*, 526 F.3d 499, 508 (9th Cir. 2008)
8 (en banc). As the Ninth Circuit explained, this mandate authorizes the district court to
9 “enter pretrial case management and discovery orders designed to ensure that the
10 relevant issues to be tried are identified, that the parties have an opportunity to engage
11 in appropriate discovery and that the parties are adequately and timely prepared so that
12 the trial can proceed efficiently and intelligibly.” *Id.* at 508-09. Orders setting the
13 timing for Rule 16 discovery are, therefore, well within this Court’s inherent power to
14 manage its docket. *Id.* at 509. In addition, the Rules of Criminal Procedure expressly
15 grant to the district court the ability to regulate discovery by granting any “appropriate
16 relief.” Fed.R.Crim.P. 16 (d)(1).
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20 Rule 16 of the Federal Rules of Criminal Procedure requires the Government to
21 disclose its expert witnesses, along with a summary of the expert’s options, the bases
22 and reasons for those opinions, and the witness’s qualifications. Fed.R.Crim.P.
23 16(a)(1)((G). In *W.R. Grace*, the Ninth Circuit resolved the question of pretrial
24 disclosure of non-expert witness, holding “[a]lthough Rule 16 does not expressly
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26

1 mandate the disclosure of non-expert witnesses, it is not inconsistent with Rule 16 and
2 Rule 2 for a court to order the government to produce a list of such witnesses as a
3 matter of its discretion.”³ *Id.* at 511 (citations omitted.)
4

5 Given the complexity of this case and the number of potential witnesses
6 involved, requiring the Government to produce its list of witnesses well in advance of
7 trial will bring the necessary focus and organization to ready the case for trial. *Id.* at 513
8 (affirming as reasonable the court’s order requiring the government to disclose its final
9 list of witnesses a year before trial was set to begin.) The Government could
10 realistically call over 100 witnesses; therefore, the defense requests that the
11 Government identify each witness it intends to call, and the order in which it intends to
12 call them. This will ensure that the trial runs smoothly because the defense will be
13 prepared to examine the witnesses as they are called.
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16 The defense will reciprocate by providing an in-order witness list.
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18 **III. CONCLUSION**

19 For all the foregoing reasons, this Court should enter an Order compelling the
20 Government’s to provide the requested witness list.
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24 ³ Rule 2 of the Federal Rules of Criminal Procedure provides: “These rules are to be
25 interpreted to provide for the just determination of every criminal proceeding, to secure
26 simplicity in procedure and fairness in administration, and to eliminate unjustifiable
expense and delay.”

Respectfully submitted this 12th day of June, 2017.

LAW OFFICES OF SEAN CHAPMAN, P.C.

BY: /s/ Sean Chapman
Sean Chapman

CERTIFICATE OF SERVICE

The undersigned certifies that on June 14, 2017, caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification to the following:

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